

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4150 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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SUDAMA GAMBHIR MARATHA

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
MS.SIDDHI TALATI, ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/12/98

ORAL JUDGEMENT

The petitioner in this writ petition under Article 226 of the Constitution of India has challenged the detention order dated 1.5.1998 passed by the Commissioner of Police, Ahmedabad City under section 3(2) of prevention of Antisocial Activities Act, 1985 (for

short PASA Act) and for his immediate release from illegal detention.

The grounds of detention were also prepared on the same date and furnished to the petitioner. In the grounds of detention the Detaining Authority disclosed his subjective satisfaction that because of registration of 9 cases, 5 in the year 1997 and 4 in the year 1998 under the Prohibition Act and also in view of two incidents narrated by the two witnesses who requested that their identity may not be disclosed on account of fear of the petitioner and formed an opinion that the petitioner is a bootlegger and his antisocial activities connected with bootlegging disturbed the public order. The detention order was therefore passed which is under challenge in this writ petition on two grounds.

The first ground is that the alleged antisocial activities of the petitioner do not amount to disturbance of public order. This contention cannot be said to be without force. No doubt 9 cases under Prohibition Act were registered in the years 1997 and 1998 against the petitioner but in the grounds of detention it is not disclosed that when premises of the petitioner was raided in connection with these cases and country made liquor was recovered from him he created a situation which amounted to disturbance of public order or which was prejudicial for maintenance of public order. Thus, the registration of 9 cases against the petitioner under Prohibition Act cannot be said to be prejudicial for maintenance of public order.

So far as the two incidents narrated by the witnesses regarding 2.4.1998 and 14.4.1998 are concerned it can safely be said that these incidents did not and could not have created a situation prejudicial for maintenance of public order. These are stray incidents and that too routine and stereotype in nature which are being furnished almost in every case under the PASA Act. One incident is that certain customers of the petitioner after consuming liquor started behaving vulgurely and the witness looking to these activities of the customers objected. Thereupon, the petitioner came out of his shop and threatened the witness and also persons who collected at the spot to save the witness. If traffic was disturbed on account of fear which prevailed in the area it cannot be said that circumstance adverse to maintenance of public order was created.

The second incident is again stereotype. In the said incident the petitioner requested the witness to

keep stock of liquor with him and on refusal by witness he was beaten. The traffice was disturbed. Daily transaction of the people was disturbed and the people went here and there for safety. This is also a stray incident in which witness was threatened and it has not created any situation prejudicial to maintenance of public order.

The Affidavit of the Detaining Authority is not an affidavit in the eyes of law. Repeated observations have been made by me that the affidavit should be sworn strictly in accordance with legal provisions. Those observations are not being adhered to. General statement has been made in the affiavit that " what is stated above is true to the best of my knowledge and information derived from the record and I believe the same to be true". It is not disclosed which para of the affidavit has been verified on personal knowledge and which para has been verified on the strength of information and record. Such vague affidavit has no evidenciary value in the eyes of law.

Para 4 of this affidavit itself shows that the Detaining Authority was of the view that the incidents narrated by two witnesses were incidents of breach of law and order. Portion of para 4 of the affidavit containing this admission is extracted below :

"I submit that all the incidents mentioned in the statements of the witnesses are the instances of breach of law and order."

In view of this admission of the Detaining Authority it hardly lies in his mouth to say that these incidents created situations prejudicial to maintenance of public order. In subsequent portion of this para the Detaining Authority has tried to exhibit his knowledge that he knows the distinction between law and order and public order but he forgot that in the foregoing portion of the same para he admitted that the incidents narrated by two witnesses created breach of law and order. Thus, when the Detaining Authority himself was of the view that the two incidents narrated by the witnesses amounted to breach of law and order he could not have passed the impugned order of detention. This is one ground for quashing the impugned order.

The second ground is that the representation of the detenu sent by his Advocate on 18.7.1998 was not considered by the State Government, rather, it was returned to the Advocate of the petitioner on 21.7.1998

with unacceptable stand that the signature of the detenu be obtained on the representation and thereafter the same should be sent for consideration. This stand can hardly be justified in view of observations of the Apex Court in Balchand Chorasias Vs. Union of India, AIR 1978 SC Pg.297.

For the reasons stated above the writ petition succeeds and is hereby allowed. The impugned order dated 1.5.1998 is hereby quashed. The petitioner shall be released from custody forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt